

IN THE MATTER OF

I. WEISENFREIND AND B. LIEBERMAN, PARTNERS
DOING BUSINESS UNDER THE TRADE NAME AND
STYLE CENTURY SILVER MANUFACTURING
COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER
26, 1914

Docket 1159—July 7, 1926

SYLLABUS.

Where it had been long known that the city of Sheffield, England, and its vicinity constituted that country's largest producing area of silverware and silver-plated ware and the center of its silver industry, and such products there made had come to be highly regarded by the trade and public, and the words "Sheffield," "Sheffield Silver," "Sheffield Plate," and "Sheffield Silver-plated Ware," had come to denote to a substantial portion of the public that the products so designated had been manufactured in Sheffield, England, and were of the quality or nature which had become associated with that name and industry; and thereafter an American firm engaged in the manufacture of silver-plated ware made by the electroplating process,

- (a) Sold said ware with the words "Sheffield Plate" and other combinations including the word "Sheffield" impressed thereon, notwithstanding the fact that the same was not manufactured in Sheffield, but was of domestic origin and not of that quality associated with the term "Sheffield" as above set forth; with the effect of inducing the purchase of the aforesaid ware thus misrepresented as to origin and quality, by a substantial portion of the trade and public in preference to the product of competitors dealing in silver-plated ware manufactured in Sheffield, England, and of competitors dealing in the products not there manufactured and not thus misrepresented, including concerns which, in the absence of any fixed standards for the ware in question, fairly and truthfully represented and identified their products by a firm or house name or nondescriptive trade name, the standard for which they severally fixed and determined or in unison agreed upon and maintained, and to the prejudice and serious injury of the aforesaid competitors from whom trade was thereby diverted; and
- (b) Sold silver-plated ware with the words "Quadruple Plate" and other combinations including the word "Quadruple" impressed thereon, notwithstanding the fact that said ware had not been coated or plated with silver four times and did not contain a thickness or weight of silver-plating equivalent to that formerly applied by four coatings, and was not of the quality and value associated in the minds of the trade and public with the word "Quadruple" or the words "Quadruple Plate," with the effect of misleading and deceiving the public and of diverting trade from and otherwise injuring competitors dealing in and truthfully and properly describing silver-plated ware coated with silver four times or given one coating equivalent in thickness to that formerly obtained by the four, and

of the quality and value associated with the word "Quadruple" as above set forth, and competitors dealing in ware not of the aforesaid quality and value and not thus misdescribed or designated; and

Where silverware made in Holland had long been highly regarded by the trade and public as fine ware of a uniform and reliable quality and the words "Dutch Silver" had long since come to signify and denote to a substantial portion of the trade and public that the silverware or silver-plated ware to which they were applied was manufactured in Holland and was of that quality which had long characterized such ware imported from Holland, and to mean to another substantial portion of the public that the ware to which the words were applied was different from and superior to ordinary silverware and silver-plated ware in connection with which such words were not used; and thereafter the aforesaid firm,

- (c) Sold silver-plated ware with the words "Dutch Silver" impressed thereon, notwithstanding the fact that said ware was not manufactured in and imported from Holland, and of that character and quality associated in the minds of the public with the term "Dutch Silver," but was of domestic origin and not materially different in kind and quality from other silver-plated ware manufactured by the aforesaid firm and not so marked or designated, with the capacity and tendency to mislead and deceive substantial portions of the trade and public, and with the effect of diverting trade from competitors truthfully marking the wares dealt in by them:

Held, That the sale of products branded as above set forth constituted an unfair method of competition.

Mr. John R. Dowlan for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, partners engaged in the manufacture of silver-plated ware and in the sale thereof to wholesale and retail dealers in various States, and with principal office and place of business in New York City, with misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, stamped or impressed the words "Sheffield Plate" and other combinations of words including the word "Sheffield," upon silver-plated ware, not made in Sheffield, England, nor its vicinity, nor of the quality associated with the terms "Sheffield Silver" and "Sheffield Plate" and the silver industry of Sheffield, England, nor made by the process originally associated with the word "Sheffield," but made by the electroplating process, and sold the same so stamped or impressed, with the capacity and tendency to create the impression among a substantial portion of the trade and public that such ware was manufactured in Sheffield and

Complaint

10 F. T. C.

is of the quality associated with the terms "Sheffield Silver" and "Sheffield Plate," and with the effect of creating an undue preference for such ware and inducing the purchase thereof by such trade and public in preference to that made and sold by respondents' competitors, some of whom deal in wares manufactured in Sheffield, and others of whom refrain from the use of such terms in connection with wares not there manufactured.¹

Respondents further, as charged, sold certain of their electroplated ware upon which they had stamped or impressed the words "Quadruple Plate," and other similar designations containing the word "Quadruple," with the tendency and capacity to mislead substantial portions of the public and those purchasing such commodities for resale to the public into believing that said ware had been coated or plated with silver four times or contained a fourfold thickness of silver-plating; or that it contained or had been plated or coated with four times thicker and heavier silver plate of substantial thickness and weight only or was "thickly and heavily plated or of a very durable or lasting quality or of a quality superior to similar plated commodities not so stamped or marked"; the fact being that said products had not been coated or plated with silver four times, did not contain a fourfold thickness of silver-plating or a plating or coating four times thicker or heavier than silver-plate of substantial thickness and weight only, and were not "of a quality superior in general to silver-plated articles not so stamped or marked"; with the effect of creating an undue preference for the aforesaid commodities and inducing the purchase thereof by a substantial portion of the public and those purchasing for resale thereto in preference to similar commodities manufactured and sold by respondents' competitors, many of whom refrain from marking or stamping their products with such words or other designations containing the word "Quadruple."

Respondents further, as charged, sold certain of their electroplated ware upon which they had stamped or impressed the words "Guaranteed Dutch Silver" and other similar designations containing the words "Dutch Silver," and sold the same so stamped or impressed, with the tendency and capacity to create the impression among substantial portions of the trade and public, that said silverware was manufactured in Holland and imported into the United States and of the character and quality theretofore and still associated in the minds of such trade and public with the term "Dutch Silver," or that such ware differed from and was of a quality superior to that

¹ The complaint is similar to that in the Busch case, the synopsis of which is somewhat fuller. See p. 217.

not so stamped and marked; the fact being that said ware was neither manufactured in nor imported from Holland, nor of the character and quality associated with the term "Dutch Silver" as above set forth, and did not differ materially in kind and quality from the ware manufactured by respondents and stamped with the words "Quadruple Plate" and other like designations as above stated, and was not of quality superior in general to silver-plated ware represented and sold as such; with the effect of creating an undue preference for such silverware and inducing the purchase thereof by such trade and public in preference "to silver-plated ware manufactured and sold by respondents' competitors, many of whom do not so stamp or mark their silver-plated ware."²

Such acts and things done by respondents, were, as charged, all to the prejudice of the public and respondents' competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served an amended complaint upon the respondents, I. Weisenfreund and B. Lieberman, partners doing business under the trade name of Century Silver Manufacturing Co., charging them with the use of unfair methods' of competition in commerce in violation of the provisions of the said act.

Respondents having entered their appearances and filed their answers herein, the chief counsel for the Federal Trade Commission and the respondents signed and filed a stipulation containing an agreed statement of facts and the further agreement that the said agreed facts might be taken as the facts in this proceeding in lieu of testimony and other evidence, and that the Commission might proceed further upon the said agreed facts to make its report in the proceeding and its findings as to the facts and conclusion, and enter its order disposing of the proceeding without the filing of briefs or the making of oral argument.

Thereupon this proceeding came on for decision and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

²The complaint contains allegations as to the original use of the term "Dutch Silver" and the significance which had come to attach thereto, similar to a paragraph dealing with this matter in the findings.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents are partners doing business under the trade name of Century Silver Manufacturing Co., with their principal office and place of business in the City and State of New York. They are engaged in the manufacture of silver-plated ware as hereafter described and the sale thereof to wholesale and retail dealers located at various points in the several States of the United States. They cause the said ware, when so sold, to be transported from their said place of business in the City and State of New York into and through other States of the United States to the said purchasers at their respective points of location. In the course and conduct of their said business, respondents compete with other individuals, partnerships, and corporations also engaged in the manufacture, sale, and transportation of silver-plated ware in interstate commerce.

PAR. 2. Respondents and their competitors use in the manufacture of silver-plated ware, the electroplating process, which consists in the covering of a form of base metal with an adherent coating of silver by the electrolysis of silver salts. The silver-plated ware thus produced varies in quality and value according to the composition of the base metal, the workmanship upon the form and the decoration, the amount and fineness of the silver deposited upon it and left upon it after the finishing process, and the protection of the surfaces exposed to wear and abrasion. There are no fixed standards for the composition of the base metal, or for the fineness or quality of the silver to be applied generally or to the wearing surfaces, so that the purchasing public is obliged to rely upon the reputation of the maker of such silver-plated ware, or the reputation of the trade name or brand attached thereto, or upon the representations of the maker or seller thereof, since the quality of the ware can not be determined except by laboratory tests.

PAR. 3. In the course and conduct of their business, respondents have manufactured and sold silver-plated ware upon which they have stamped or impressed the words "Sheffield Plate," and other combinations of words including the word "Sheffield"; said respondents have also manufactured and sold other ware upon which they have stamped or impressed the words "Quadruple Plate," or other combinations of words including the word "Quadruple"; and said respondents have also manufactured and sold silver-plated ware upon which they have stamped or impressed the words "Dutch Silver." All of the ware so marked has been ultimately sold or offered for sale to the purchasing public.

PAR. 4. About the year 1742 there was originated in Sheffield, England, a process for the production of silver-plated ware, which process involved the welding of a silver plate to one or both sides of a sheet or bar of copper so as to form one thoroughly coherent mass which was rolled to the desired gauge and subsequently worked into the desired form. The ware thus produced was properly known as "copper rolled plate" though this name was not used as a trade name or designation. The copper rolled plate of Sheffield, England, acquired a very considerable reputation for excellence in quality, workmanship, and design, and though the name "Sheffield" was not generally impressed upon or affixed to the ware itself, which was identified by the makers' registered marks, the copper rolled plate came to be generally known and is now known as "Sheffield." While the cheaper electroplating process displaced copper rolled plate, which practically went out of production, there have been and now are from time to time importations of the copper rolled plate into the United States and there is a considerable trade in copper rolled plate at prices which reflect not only its value as plated ware but its historic and artistic value as well. The name "Sheffield" as applied to silver-plated ware at the present time implies a quality and a value peculiar to the copper rolled plate process as well as the process itself, and its use is a representation thereof.

PAR. 5. Many years prior to the use of the word "Sheffield Plate" and other combinations of the word "Sheffield" by respondent as hereinbefore set out, the silversmiths of the city of Sheffield, England, and vicinity adopted the comparatively new electroplating process, in lieu of the older copper rolled plate process, which was practically abandoned, and maintained through the use of the electroplating process the high reputation for quality which they had acquired in the older process. The city of Sheffield, England, and its vicinity, have been continuously since many years prior to the said use of the word "Sheffield" by respondent, and now are quite generally known to be, the largest producing area of silverware and silver-plated ware in England, and the center of and predominant place in the silver industry of that country. Silverware and silver-plated ware made by the silversmiths of Sheffield, England, have been since many years prior to the use of the word "Sheffield" by respondents, and now are highly regarded by the trade and the public in the United States, England and other countries, as of uniform, reliable and dependable quality; and the words "Sheffield," "Sheffield Silver," "Sheffield Plate," and "Sheffield Silver-plated Ware" when used in connection with silverware and silver-plated ware have signified and denoted, and now signify and denote to a substantial portion of the public that such

Findings

10 F. T. C.

silverware and silver-plated ware were manufactured in Sheffield, England, and are of the quality which has become associated with that name and industry.

PAR. 6. The use by respondents of the term "Sheffield Plate," either alone or with other words, as set out in paragraph 3 herein, has the capacity and tendency to create the impression among a substantial portion of the trade and public that the silver-plated ware upon which the word appears was manufactured in Sheffield, England, and is of the quality which has been and now is associated with the terms "Sheffield," "Sheffield Silver," "Sheffield Plate," and the silver industry of Sheffield, England, whereas in truth and in fact the silver-plated ware sold by respondent with said word stamped or impressed thereon is not manufactured in Sheffield, England, or in its vicinity, but is made in the United States of America, and is not of the quality which has been and now is associated with the word "Sheffield" and the silver industry of Sheffield, England; and the use of this word by respondents is a misrepresentation of the origin and quality of respondents' ware, and is confusing and misleading, and tends to create and does create an undue preference for such silver-plated ware among, and tends to induce and does induce the purchase of such silver-plated ware by, a substantial portion of the trade and public in preference to silver-plated ware manufactured and sold by respondents' competitors, some of whom deal in wares which are manufactured in Sheffield, England, and others of whom refrain from the use of the word "Sheffield" on wares not manufactured in Sheffield, England, the respondent thereby diverting trade from its competitors truthfully marking the wares sold by them.

PAR. 7. There are competitors of respondent in the manufacture and sale of silver-plated ware who are not endeavoring to induce the purchase of their products by the public by representing them as "Sheffield" either with reference to process of manufacture or quality, but, recognizing that there is no fixed standard by which the value and quality of silver-plated ware can be represented to the purchasing public, have adopted and are following the practice of identifying their product by a firm or house name or by a nondescriptive trade name, the standard for which they severally fix and determine or in unison agree upon and maintain. The competitive operations of such manufacturers fairly and truthfully representing their products to the public, are seriously injured by the methods and practices of the respondent misrepresenting the said process and quality of its products aforesaid, as they unfairly divert trade from said competitors.

PAR. 8. For many years during the development of the electroplating process, large quantities of high grade and excellent quality silver-plated ware, which had been coated or plated four times before the desired thickness or weight of silver plate was obtained, were marketed throughout the United States under the brand and designation of "Quadruple," this word being in some instances accompanied by the name of the maker or seller, and the word "Quadruple" when used in connection with silver-plated ware became associated in the minds of the trade and the purchasing public with a high grade and excellent quality of silver-plated ware which had been coated or plated four times. For a number of years last past, the electroplating process has been perfected so that the desired thickness and weight of silver plating can now be obtained with one coating or plating, by which process a thickness of silver and a quality of plated ware similar to that formerly obtained by the use of four coatings can be and are produced. This fact has become generally known to the trade and the purchasing public, so that the word "Quadruple" has come to mean and now means a thickness of plating and a quality of ware similar to that formerly obtained by the use of four coatings of silver.

PAR. 9. The silver-plated ware sold by respondents as described in paragraph 1 hereof, and marked with the words "Quadruple Plate," as set out in paragraph 3 hereof, is not ware which has been coated or plated with silver four times, and does not contain a thickness or weight of silver plating equivalent to that which was formerly applied by four coatings, and is not of the quality and value associated in the minds of the trade and the public with the word "Quadruple" or the words "Quadruple Plate" as applied to silver-plated ware.

PAR. 10. The use by respondents of the words "Quadruple Plate" as a brand or designation of silver-plated ware, all as set out in paragraphs 3 and 5 herein, is false and misleading and has a tendency and capacity to, and does, mislead and deceive the public generally by causing them to believe that the silver-plated ware so designated and described has been coated or plated with silver four times, or has been given a single coating of silver equivalent in weight and value to that which was formerly applied by four coatings and is of the quality and value associated with the word "Quadruple" as aforesaid.

PAR. 11. There are competitors of respondents referred to in paragraph 1 hereof who sell silver-plated ware which has been coated with silver four times or has been given a single coating of silver equivalent in thickness to that which was formerly applied by four platings, and is of the quality and value commonly associated in the

minds of the trade and the public with the word "Quadruple," and who truthfully and properly describe their products. There are others among said competitors who sell silver-plated ware which is not of the quality and value associated with the word "Quadruple" and who do not use the said word to designate and describe their said ware. The practices of respondents as set out in paragraph 3 herein tend to, and do, divert trade from and otherwise injure both classes of these competitors.

PAR. 12. The term "Dutch Silver" was originally used by the trade and public in the United States to signify and denote silverware made by the silversmiths of Holland and imported from that country into the United States. Said silverware has been and for many years and still is highly regarded by the trade and public in the United States as fine ware of a uniform and reliable quality and the words "Dutch Silver" and phrases containing said words, when used in connection with or occurring on silverware or silver-plated ware have long since come to signify and denote, and now signify and denote, to a substantial portion of the trade and public that such silverware or silver-plated ware was manufactured in Holland and is of the well-known quality which has long characterized and still characterizes fine silverware or silver-plated ware imported from Holland into the United States, as hereinbefore set out; and to another substantial portion of the public the words "Dutch Silver" and phrases containing said words when used in connection with or occurring on silverware or silver-plated ware have come to signify and denote and now signify and denote that the ware in connection with which said words and phrases are used or upon which they occur is different from and superior to ordinary silverware and silver-plated ware in connection with which such words are not used.

PAR. 13. The use by respondents of the term "Dutch Silver" and of other terms containing the words "Dutch Silver," as set out herein, has the tendency and capacity to create the impression among a substantial portion of the trade and public that respondents' silver-plated ware upon which such words or phrases appear is manufactured in Holland and imported into the United States, and is of the character and quality which has been, and now is, associated in the minds of such portion of the trade and public with the term "Dutch Silver"; among another substantial portion of the trade and public the use by respondents of said words and phrases in the manner above set out has the tendency and capacity to create the impression that respondents' silver-plated ware upon which said words and phrases appear is ware differing from and of a quality superior to

silver-plated ware not so stamped or marked, whereas respondents' said ware upon which the term "Dutch Silver" or other phrases containing the words "Dutch Silver" appear was not manufactured in and imported from Holland and is not of the character and quality which has been and now is associated in the minds of the public with the term "Dutch Silver," but was made in the United States of America and is silver-plated ware not differing materially in kind and quality from the other silver-plated ware manufactured by respondents as hereinbefore set out, and not marked, or designated and described by the use of the term "Dutch Silver."

PAR. 14. Among the competitors of respondents referred to in paragraph 1 hereof are some who sell ware which they truthfully and accurately designate and describe as "Dutch Silver"; and there are others of said competitors who sell silver-plated ware and who do not designate and describe such ware by the use of the term "Dutch Silver." The acts and practices of respondents as hereinabove set forth tend to, and do, divert trade from respondents' competitors truthfully marking the wares sold by them.

CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the stipulation as to the facts entered into by counsel for the Commission and by respondents, I. Weisenfreind and B. Lieberman, partners doing business under the trade name and style of Century Silver Manufacturing Co., and the Commission having made its findings as to the facts with its conclusion that the said respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That respondents, I. Weisenfreind and B. Lieberman, partners doing business under the trade name and style of

Century Silver Manufacturing Co., their agents, servants, employees, and representatives, do cease and desist from:

(1) Employing or using in connection with the sale of silver-plated ware which was not made in Sheffield, England, the word "Sheffield" alone or in combination with any other word or words, sign, symbol, or device to describe or designate such silver-plated ware either by stamping or impressing the name "Sheffield" thereon or in any other manner;

(2) Employing or using in connection with the sale of silver-plated ware which has not been coated or plated with silver four times, or has not been given a single coating of silver equivalent in amount and quality to the amount and quality formerly obtained by the application of four coatings, the word "Quadruple," alone or in combination with any other word or words, sign, symbol, or device to describe or designate such silver-plated ware, either by stamping or impressing the word "Quadruple" thereon or in any other manner.

(3) Employing or using in connection with the sale of silver-plated ware which has not been made in Holland the word "Dutch" or the words "Dutch Silver" alone or in combination with any other word or words, sign, symbol, or device to describe or designate such silver-plated ware either by stamping or impressing the words "Dutch Silver" or the word "Dutch" thereon, or in any other manner.

It is further ordered, That respondents shall within thirty days from notice hereof file with the Commission a report setting out in detail the manner and form in which they have complied with the order of the Commission herein set forth.

Complaint

IN THE MATTER OF
A. L. WAGNER MANUFACTURING COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER
26, 1914

Docket 1160—July 7, 1926

SYLLABUS.

Where it had been long known that the city of Sheffield, England, and its vicinity constituted that country's largest producing area of silverware and silver-plated ware and the center of its silver industry, and such products there made had come to be highly regarded by the trade and public, and the words "Sheffield", "Sheffield Silver", "Sheffield Plate", and "Sheffield Silver-plated Ware", had come to denote to a substantial portion of the public that the products so designated had been manufactured in Sheffield, England, and were of the quality or nature which had become associated with that name and industry; and thereafter an American manufacturer of silver-plated ware made by the electroplating process sold said ware with the words "Sheffield Plated", and other combinations including the word "Sheffield" impressed thereon, and on its letterheads, business cards and other stationery and in its advertising literature used the words "Manufacturers of Sheffield Silver-plated Ware," notwithstanding the fact that said ware was not manufactured in Sheffield, but was of domestic origin and not of that quality associated with the term "Sheffield" as above set forth; with the effect of inducing the purchase of the aforesaid ware thus misrepresented as to origin and quality, by a substantial portion of the trade and public in preference to the product of competitors dealing in silver-plated ware manufactured in Sheffield, England, and of competitors dealing in products not there manufactured and not thus misrepresented, including concerns which, in the absence of any fixed standards for the ware in question, fairly and truthfully represented and identified their products by a firm or house name or nondescriptive trade name, the standard for which they severally fixed and determined or in unison agreed upon and maintained, and to the prejudice and serious injury of the aforesaid competitors from whom trade was thereby diverted:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. John R. Dowlan for the Commission.

Kaye, McDavitt & Scholer, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the manufacture and sale of silver-plated ware, not made in Sheffield, Eng-